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In Re:  
Kathleen M Mulvihill and James M Mulvihill,  
Debtors,

Case No. 04-34446  
Chapter 13 Case

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**NOTICE OF HEARING AND MOTION FOR RELIEF FROM THE STAY**

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TO: Debtor(s) and other entities specified in Local Rule 9013-3.

1. Ford Motor Credit Company moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion on September 20, 2004 at 10:30 AM o'clock, in Courtroom No. 228B, at the United States Courthouse, 316 North Robert Street, St. Paul, MN.
3. Any response to this motion must be filed and delivered not later than September 15, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 9, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on July 30, 2004. The case is now pending in this court.
5. This motion arises under 11 U.S.C. §362(d) and 1301(c), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3, and 9017-1. Movant seeks relief from the automatic stay in §362(a) to foreclose its lien against the 2001 Ford Explorer 2D Sport 4WD (the collateral), and from the codebtor stay to pursue collection and repossession remedies against the codebtor, Jennifer R Preston, and requests the

court permit Movant to immediately enforce the order requested, lifting the 10 day stay imposed by Rule 4001(a)(3).

6. Movant requests relief from the stay for cause under §362(d)(1). Debtors are delinquent under the terms of the original contract with Movant and under the Chapter 13 Plan. Movant requests relief under §362(d)(2). The Debtors have no equity in the collateral, and the collateral is not necessary to an effective reorganization.
7. Movant requests relief from the codebtor stay under §1301(c)(1) and (2). The codebtor received consideration for the claim upon becoming a co-owner or co-lessee of the vehicle. Also, the Plan is not providing for payment due to Debtor's failure to make any payments pursuant to a Plan.
8. Debtor's proposed plan does not provide for payment in full of the entire amount owing under the Contract. It provides for surrender of the collateral.
9. Movant gives notice that it may, if necessary, call Carolyn Boynton, or some other representative of Movant, from Movant's offices in Minnesota, to testify regarding the debt and value.
10. This notice of motion and motion also serve as notice of default required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn.1980). If the default is not cured before the hearing, Movant will repossess the property promptly upon the Court signing the Order.
11. A separate Memorandum of Fact and Law is attached hereto and made a part hereof.

**WHEREFORE**, Ford Motor Credit Company moves the Court for an order modifying the automatic stay of §362(a) and the codebtor stay of §1301(a), if applicable, and such other relief as may be just and equitable.

Dated: September 3, 2004

**STEWART, ZLIMEN & JUNGERS, LTD.**

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

This is a communication from a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

MINNESOTA DEPARTMENT OF PUBLIC  
DRIVER & VEHICLE SERVICES DIVISION  
445 MINNESOTA ST., ST. PAUL, MN 55101

CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

PRESTON JENNIFER RENEE  
MULVIHILL KATHLEEN MARIE  
924 S ELM ST  
BELLE PLAINE MN 56011

Permit No. 171  
St. Paul, MN

\*

HVA377

1ST SECURED PARTY

**LIEN HOLDER**

01	FORD	2WEPR	H0930P179
Year	Make	Model	Title NR.
1FMYU70E01UC53241	01/21/02	NO	
VIN	Security Date	Rebuilt	

**RETAIN THIS DOCUMENT** - See reverse  
side of this form for removing this lien.

FORD MOTOR CREDIT CO  
PO BOX 105704  
ATLANTA GA 30348-5704

**EXHIBIT A**

# MINNESOTA SIMPLE INTEREST VEHICLE RETAIL INSTALMENT CONTRACT PH36 DATE 01/21/2002

Buyer (and Co-Buyer) Name and Address (Including County and Zip Code) JENNIFER RENAE PRESTON 924 S ELM ST BELLE PLAINE SCOTT MN 56011 KATHY MARIE MULVIHILL 924 S ELM ST BELLE PLAINE SCOTT MN 56011	CREDITOR (Seller Name and Address) APPLE FORD, SHAKOPEE 1400 1ST AVE. SHAKOPEE MN 55379
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You, the Buyer (and Co-Buyer, if any), may buy the vehicle described below for cash or on credit. The cash price is shown below as "Cash Price." The credit price is shown below as "Total Sale Price." By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract.

New/Used	Year and Make	Model	GVW If Truck (lbs.)	Vehicle Identification Number	Use For Which Purchased
NEW	2001	EXPLORER		1FMYU70E01UC53241	<input type="checkbox"/> Personal <input type="checkbox"/> Agricultural <input type="checkbox"/> Commercial

Trade-In	1996 PONTIAC	\$ 2750.00	\$ N/A
	Year and Make	Gross Allowance	Amount Owed

ITEMIZATION OF AMOUNT FINANCED	
1. Cash Price	\$ 24467.00 (1)
2. Down Payment	
Manufacturer's Rebate Assigned to Creditor	\$ N/A
Cash Down Payment	\$ N/A
Trade-In (description above)	\$ 2750.00
Total Down Payment	\$ 2750.00 (2)
3. Unpaid Balance of Cash Price (1 minus 2)	\$ 21717.00 (3)
4. Amounts Paid On Your Behalf (Seller may be retaining a portion of these amounts)	
To Public Officials	
(i) for license, title & registration fees \$ 347.50;	
(ii) for filing fees \$ N/A	
(iii) for taxes (not in Cash Price)	\$ 1411.61
To Insurance Companies for:	
Credit Life Insurance	\$ N/A
Credit Disability Insurance	\$ N/A
To Apple Ford, Shakopee DOC FEE	\$ 25.00
Total	\$ 1784.11 (4)
5. Amount Financed (3 plus 4)	\$ 23501.11 (5)

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate	The dollar amount the credit will cost you	The amount of credit provided to you or on your behalf	The amount you will have paid when you have made all scheduled payments	The total cost of your purchase on credit, including your downpayment
3.90 %	\$ 2445.89	\$ 23501.11	\$ 25947.00	\$ 28697.00

Payment Schedule —	<input checked="" type="checkbox"/> Number of payments	Amount of Each payment	When Payments are due
Your payment schedule will be:	59	\$ 432.45	monthly starting
	1 final	\$ 432.45	03/07/2002

**Prepayment:** If you pay off your debt early, you will not have to pay a penalty.  
**Security Interest:** You are giving a security interest in the vehicle being purchased.  
**Contract:** Please see this contract for additional information on security interest, nonpayment, default, the right to require repayment of your debt in full before the scheduled date, and prepayment penalty.

**COMMERCIAL OR AGRICULTURAL USE CONTRACTS:** If you purchased the vehicle for commercial or agricultural use, you must pay a late charge on the portion of each payment received more than 10 days late of 7.5 percent of the late amount or \$50.00, whichever is less.

Any change in this contract must be in writing and signed by you and the Creditor.

BUYER: *[Signature]* CO-BUYER: *[Signature]*

NOTICE TO BUYER	
Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to an exact copy of the contract you sign.	
You acknowledge receipt of a true and completely filled in copy of this contract, signed by both yourself and the seller, at the time of signing.	
IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.	
<i>[Signature]</i> Buyer Signs	<i>[Signature]</i> (Co) Buyer Signs

By signing below, the Seller accepts this contract. If no other Assignee is named in a separate assignment attached to this contract, the Seller assigns it to Ford Motor Credit Company.

Seller	APPLE FORD, SHAKOPEE	By	<i>[Signature]</i>	Title	MGR.
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FC 17022-SI Oct 00 (Previous editions may NOT be used.) SEE BACK FOR ADDITIONAL AGREEMENTS

## INSURANCE

YOU MAY OBTAIN VEHICLE INSURANCE FROM A PERSON OF YOUR CHOICE.

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED.

CREDIT LIFE, CREDIT DISABILITY AND OTHER OPTIONAL INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE PREMIUM.

<input type="checkbox"/> Credit Life	Insurer
\$ N/A	Insured(s)
Premium	Signature(s)

<input type="checkbox"/> Credit Disability	Insurer
\$ N/A	Insured
Premium	Signature

<input type="checkbox"/> Type of Insurance	Term
Insurer	\$ N/A
Premium	Signature

Credit Life and Credit Disability Insurance are for the term of the contract. The amount and coverages are shown in a notice or agreement given to you today.

You are required to insure the vehicle. If a charge is shown below, the Creditor will try to buy the coverages checked for the term shown. Coverages will be based on the cash value of the vehicle at the time of loss, but not more than the limits of the policy.

<input type="checkbox"/> Comprehensive	<input type="checkbox"/> \$ N/A Deductible Collision
<input type="checkbox"/> Fire-Theft-Combined Additional Coverage	
<input type="checkbox"/> Towing and Labor	
<input type="checkbox"/> Term	Months (Estimate)
Premium	\$ N/A

## QUESTIONS?



PLEASE CALL US AT 1-800-727-7000 00-001

# EXHIBIT B

ORIGINAL

# ADDITIONAL AGREEMENTS

**A. Payments:** You must make all payments when they are due. You may prepay your debt at any time without penalty. This is a simple interest contract. The actual finance charge you agree to pay will depend on your payment patterns. The actual finance charge may exceed the disclosed Finance Charge if you make your payments later than the scheduled dates or in less than the scheduled amount. Your payment will be applied first to the earned and unpaid part of the Finance Charge and then to the unpaid Amount Financed. The Finance Charge is earned by applying the Annual Percentage Rate to the unpaid Amount Financed for the actual time that the unpaid Amount Financed is outstanding.

**B. Security Interest:** You give the Creditor a security interest in:

1. The vehicle and all parts or other goods put on the vehicle;
2. All money or goods received for the vehicle; and
3. All insurance premiums and service contracts financed for you.

This secures payment of all amounts you owe under this contract. It also secures your other agreements in this contract.

**C. Use of Vehicle - Warranties:** You must take care of the vehicle and obey all laws in using it. You may not sell or rent the vehicle, and you must keep it free from the claims of others. You will not use or permit the use of the vehicle outside of the United States, except for up to 30 days in Canada or Mexico, without the prior written consent of the Creditor. If the vehicle is of a type normally used for personal use and the Creditor, or the vehicle's manufacturer, extends a written warranty or service contract covering the vehicle within 90 days from the date of this contract, you get implied warranties of merchantability and fitness for a particular purpose covering the vehicle. Otherwise, you understand and agree that there are no such implied warranties.

**D. Insurance:** You must insure yourself and the Creditor against loss or damage to the vehicle. The type and amount of insurance must be approved by the Creditor. If the Creditor obtains a refund on insurance or service contracts, the Creditor will subtract the refund from what you owe. Whether or not the vehicle is insured, you must pay for it if it is lost, damaged, or destroyed.

If a charge for vehicle insurance is shown on the front, the Creditor will try to buy the coverages checked for the term shown. The Creditor is not liable, though, if he cannot do so. If these coverages cost more than the amount shown for insurance, the Creditor may buy them for a shorter term or he may give you credit for the amount shown. If he cannot buy any insurance, he will give you credit for the amount shown. The credit will be made to the last payments due.

**E. Late Payments:** You must pay any cost paid by the Creditor to collect any late payment, as allowed by law. Acceptance of a late payment does not excuse your default or mean that you can keep making payments after they are due. The Creditor may take the steps set forth below if there is any default.

**F. Default:** You will be in default if:

1. You do not make a payment when it is due; or
2. You gave false or misleading information on your credit application relating to this contract; or
3. Your vehicle is seized by any local, state, or federal authority and is not promptly and unconditionally returned to you; or
4. You file a bankruptcy petition or one is filed against you; or
5. You do not keep any other promise in this contract.

If you default, the Creditor may require you to pay at once the unpaid Amount Financed, the earned and unpaid part of the Finance Charge, and all other amounts due under this contract. He may repossess (take back) the vehicle, too. He may also take goods found in the vehicle when repossessed and hold them for you.

If the vehicle is taken back, he will send you a notice. The notice will say that you may redeem (buy back) the vehicle. It will also show the amount needed to redeem. You may redeem the vehicle up to the time the Creditor sells it or agrees to sell it. If you do not redeem the vehicle, it will be sold.

The money from the sale, less allowed expenses, will be used to pay the amount still owed on this contract. Allowed expenses include those paid as a direct result of having to retake the vehicle, hold it, prepare it for sale, and sell it. You must also pay attorney fees not to exceed 15% of the amount due and payable under the contract, and court costs payable by Ford Credit to obtain, hold, and sell the vehicle, collect amounts due and enforce Holder's rights under the contract. If there is any money left (a surplus), it will be paid to you. If the money from the sale is not enough to pay off this contract and costs, you will pay what is still owed to the Creditor, if allowed by law. If you do not pay this amount when the Creditor asks, the Creditor may charge you interest at the highest lawful rate until you pay.

**G. General:** To contact Ford Motor Credit Company about this account, call 1-(800) 727-7000. Any change in this contract must be in writing and signed by you and the Creditor. The law of Minnesota applies to this contract. If that law does not allow all the agreements in this contract, the ones that are not allowed will be void. The rest of this contract will still be good.

## FTC NOTICES

**NOTICE — ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.**

Used Motor Vehicle Buyers Guide. If you are buying a used vehicle with this contract, federal regulations may require a special Buyers Guide to be displayed on the window of the vehicle. THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

\*Does not apply if purchased for commercial or agricultural use. In that case, you (debtor) will not assert against any assignee or subsequent holder of this Contract any claims, defenses, or setoffs which you may have against the Seller or manufacturer of the vehicle.

## GUARANTY

To cause the Seller to sell the vehicle described on the front of this contract to the Buyer, on credit, each person who signs below as a "Guarantor" guarantees the payment of this contract. This means that if the Buyer fails to pay any money that is owed on this contract, each one who signs as a guarantor will pay it when asked. Each person who signs below agrees that he will be liable for the whole amount owed even if one or more other persons also signs this Guaranty. He also agrees to be liable even if the Creditor does one or more of the following: (a) gives the Buyer more time to pay one or more payments, or (b) gives a release in full or in part to any of the other Guarantors, or (c) releases any security. Each Guarantor also states that he has received a completed copy of this contract and this Guaranty at the time of signing.

Guarantor \_\_\_\_\_ Address \_\_\_\_\_

Guarantor \_\_\_\_\_ Address \_\_\_\_\_



Trade-In	BODY TYPE	Model No.	Loan	Retail	Trade-In	BODY TYPE	Model No.	Loan	Retail
<b>2002 EXCURSION-3/4 Ton-V10 MC: IV</b>					<b>2002 RANGER-1/2 Ton-V6 MC: II</b>				
19525	Utility XLT	U40	17575	22950	275	Add Rear Air Cond*		275	325
23250	Utility XLT T-Diesel	U40F	20925	26625	175	Add Rear Bucket Seats*		175	225
21825	Utility Limited	U42	19950	25100	75	Add Theft Recovery System		75	100
25550	Utility Limited T-Diesel	U42F	23000	29050	725	Deduct V6 Eng		725	725
21525	Utility XLT (4WD)	U41	19375	24775	675	Deduct W/out Air Cond		675	675
25250	Utility XLT TD (4WD)	U41F	22725	28750	200	Deduct W/out Cruise		200	200
23825	Utility Limited (4WD)	U43	21450	27225	150	Deduct W/out Pwr Locks		150	150
27050	Utility Limited TD (4WD) U43F	24900	31300		200	Deduct W/out Pwr Wind		200	200
175	Add Rear Bucket Seats		175	200	*Std. Traveler				
450	Add Rear Entertainment Sys		450	500	<b>2002 F150-1/2 Ton-V6 MC: II</b>				
75	Add Theft Recovery System		75	100	7325	Styleside	R10*	6900	9325
575	Deduct 5.4L V8 Eng (V10)		575	575	7425	Styleside LB	R10	6700	9450
500	Deduct W/out Leather		500	500	7700	Flareside	R10*	6950	9750
225	Deduct W/out Pwr Seat		225	225	9375	Style Supercab 2D	R14*	8450	11675
<b>2002 WINDSTAR-V6 MC: II</b>					9975	Style Supercab 4D	R44*	9000	12225
7675	Cargo Van	A54	6925	9725	9750	Flare Supercab 2D	R14*	8775	11875
9675	Wagon 3D LX	A50	8725	11900	10350	Flare Supercab 4D	R44*	9325	12625
10975	Wagon 4D LX	A51	9900	13300	700	Add Edge Trim (Std. Tremor)		700	800
13075	Wagon SE	A52	11775	15650	900	Add FX4 Off-Road Pkg		900	1000
15975	Wagon SEL	A53	14400	18725	550	Add XLT Trim		550	625
16975	Wagon Limited	A58	15300	19800	825	Add Tremor Pkg		825	1050
600	Add 2-Pwr Sliding Doors		600	675	2750	Add 4 Wheel Drive		2750	2975
250	Add AIA Wheels (4D LX)		250	300	250	Add Alum/Alloy Wheels		250	300
75	Add CD (Van, LX)		75	100	75	Add CD Player		75	100
450	Add Left Sliding Door (3D LX)		450	500	175	Add Cruise Control		175	200
175	Add Pwr Seat (4D LX)		175	200	125	Add Power Door Locks		125	150
275	Add Rear Air (4D LX)		275	325	175	Add Power Windows		175	200
175	Add Rear Bucket Seats (4D LX)		175	200	75	Add Theft Recovery System		75	100
450	Add Rear Entertainment Sys		450	500	125	Add Tire Wheel		125	150
75	Add Theft Recovery System		75	100	675	Deduct 4 Cyl. Eng		675	675
175	Deduct W/out Cruise		175	175	625	Deduct W/out Air Cond		625	625
125	Deduct W/out Tilt		125	125	525	Deduct W/out AT		525	525
<b>2002 E SERIES VAN-1/2-1 Ton-V6 MC: III</b>					<b>2002 F150-1/2 Ton-V6 MC: III</b>				
11225	E150 Cargo	E14	10125	13625	9525	Style XL "WS" 6 3/4"	F17*	9575	11725
13325	E150 Wagon	E11	12000	15900	9625	Style XL "WS" 8"	F17*	9675	11850
18425	E150 Wgn Traveler	E11	14900	19200	10975	Styleside XL 6 3/4"	F17*	9900	13300
11725	E250 Cargo	E24	10575	14150	11875	Styleside XL 8"	F17*	9975	13475
12475	E250 Ext. Cargo	S24	11250	15000	11625	Flareside XL 6 3/4"	F07*	10475	14000
12225	E350 Cargo	E34	11025	14725	22375	Lightning 6 3/4"	F073	20150	25700
14325	E350 Wagon	E31	12900	16975	13425	S-Cab XL "WS" 6 3/4"	X17*	12100	16025
12975	E350 Ext. Cargo	S34	11700	15525	13525	S-Cab XL "WS" 8"	X17*	12175	16125
15075	E350 Wgn Traveler	S31	13575	17775	14875	Supercab XL 6 3/4"	X17*	13400	17500
18175	E350 Wgn Traveler	S31	16375	21200	14975	Supercab XL 8"	X17*	13500	17675
800	Add Chateau (Ex. Traveler)		800	900	15525	Flare Super XL 6 3/4"	X07*	14075	18200
650	Add XLT (Ex. Traveler)		650	725	17200	S-Cab King Ranch 6 3/4" X17*		19500	24175
575	Add 6.8L V10 Eng		575	650	<b>2002 F150 SUPERCREW-1/2 Ton-V6 MC: III</b>				
3775	Add 7.3L T-Diesel Eng		3775	4000	18025	XLT 5 1/2"	W07*	18225	21600
300	Add Alum/Alloy Wheels*		300	350	19350	Lariat 5 1/2"	W07*	17425	22450
125	Add CD Player*		125	150	19550	King Ranch 5 1/2"	W07*	17600	22675
200	Add Power Seat*		200	225	25825	Harley 5 1/2"	W073	23250	28300
<b>2002 F250 SUPER DUTY-3/4 Ton-V6 MC: III</b>					<b>2002 F250 SUPER DUTY-3/4 Ton-V6 MC: III</b>				
					14825	Styleside XL 8"	F20*	13350	17900
					17925	Supercab XL 6 3/4"	X20*	16150	20950
					18025	Supercab XL 8"	X20*	16225	21050

SEE TRUCK OPTION PAGE FOR ADDITIONAL OPTIONS  
MIDWEST EDITION - AUGUST 2004

Trade-In	BODY TYPE	Model No.	Loan	Retail	Trade-In	BODY TYPE	Model No.	Loan	Retail
<b>2001 EXPLORER-V6 MC: II</b>					<b>2001 EXPLORER SPORT TRAC-V6 MC: II</b>				
19825	Crew Cab XL 6 3/4"	W20*	17850	22950	15250	Utility 4D (4WD)	U77	13725	17950
19825	Crew Cab XL 8"	W20*	17950	23075	8225	Wagon 2D Sport	U60	8325	11400
<b>2002 F350 SUPER DUTY-1 Ton-V8 MC: III</b>					9775	Wagon 4D XLS	U62	9900	12900
15675	Styleside XL 8"	F30*	14125	18400	11175	Wagon 4D XLT	U63	10975	13575
18775	Supercab XL 6 3/4"	X30*	16900	21850	13425	Wagon 4D Eddie Bauer	U64	12100	16625
18775	Supercab XL 8"	X30*	17000	21950	13575	Wagon 4D Limited	U65	12225	16175
20675	Crew Cab XL 6 3/4"	W30*	18825	23875	10825	Wagon 2D Sport (4WD)	U70	9700	13125
20775	Crew Cab XL 8"	W30*	18700	23975	11375	Wagon 4D XLS (4WD)	U72	10250	13600
<b>F SERIES PICKUP OPTIONS</b>					12775	XLT (4WD/4WD)	U73/83	11500	15325
225	Add FX4 Off-Road Pkg.		225	250	15025	E Bauer (4WD/4WD)	U74/84	13525	17725
1350	Add Lariat Trim (XL)		1350	1500	15175	Limited (4WD/4WD)	U75/85	13675	17875
675	Add XLT Trim (XL)		675	750	<b>EXPLORER SPORT TRAC/EXPLORER OPTIONS</b>				
2700	Add 4 Wheel Drive		2700	2925	350	Add 5.0L V8 Engine		350	400
575	Add 6.8L V10 Eng		575	650	75	Add CD Player (XLS)		75	100
4100	Add 7.3L T-Diesel Eng		4100	4325	350	Add Leather Seats*		350	400
850	Add 7000 Payload Pkg (F150)		850	950	175	Add MACH Pioneer*		175	200
300	Add Alum/Alloy Wheels (Std. S-Crew, Lightning, King Ranch)		300	350	150	Add Power Seat		150	175
125	Add Compact Disc Player (Std. S-Crew, Lightning, King Ranch)		125	150	500	Add Power Sunroof (Std. XLT, E. Bauer, Ltd.)		500	575
675	Add Dual Rear Whte		675	750	475	Deduct W/out AT		475	475
450	Add Leather Seats*		450	500	150	Deduct W/out Cruise		150	150
200	Add Power Seat*		200	225	100	Deduct W/out Tilt		100	100
600	Add Power Sunroof		600	675	*Std. Eddie Bauer, Limited				
175	Add Rear Bucket Seats (K-Ranch S-Crew, SuperDuty)		175	200	<b>2001 EXPEDITION-1/2 Ton-V6 MC: IV</b>				
450	Add Rear Entertainment Sys		450	500	15750	Utility XLT	U15	14175	18500
75	Add Theft Recovery System		75	100	16150	Eddie Bauer	U17	16350	21175
725	Deduct V6 Eng		725	725	17650	Utility XLT (4WD)	U18	18000	23050
675	Deduct W/out Air Cond		675	675	20050	Eddie Bauer (4WD)	U18	18850	23200
575	Deduct W/out AT		575	575	125	Add CD (Std. Eddie Bauer)		125	150
200	Deduct W/out Cruise		200	200	450	Add Leather Seats (Std. Eddie Bauer)		450	500
150	Deduct W/out Tilt		150	150	600	Add Power Sunroof		600	675
*Std. Light, S-Crew Lariat/Harley, K-Ranch					150	Add Rear Bucket Seats w/		150	175
<b>FORD</b>					375	Add Rear Entertainment Sys*		375	425
<b>2001 ESCAPE-V6 MC: II</b>					50	Add Theft Recovery System		50	75
10100	Utility 4D XLS	U01	9100	12350	350	Deduct 4.6L V8 Eng		350	350
11500	Utility 4D XLT	U03	10350	13925	250	Deduct W/out 3rd Row Seat		250	250
11700	Utility 4D XLS (4WD)	U02	10550	14125	250	Deduct W/out Rear Air		250	250
13100	Utility 4D XLT (4WD)	U04	11800	15675	<b>2001 EXCURSION-3/4 Ton-V10 MC: IV</b>				
300	Add AIA Wheels (XLS)		300	325	16900	Utility XLT	U40	15125	19900
350	Add Leather Seats		350	400	20300	Utility XLT T-Diesel	U40F	18275	23475
175	Add MACH Stereo Sys		175	200	16950	Utility Limited	U42	16975	21625
150	Add Power Seat		150	175	22350	Utility Limited T-Diesel	U42F	20125	25675
500	Add Power Sunroof		500	575	18700	Utility XLT (4WD)	U41	16850	21775
50	Add Theft Recovery System		50	75	22200	Utility XLT TD (4WD)	U41F	20000	25500
625	Deduct 4 Cyl. Eng		625	625	20750	Utility Limited (4WD)	U43	18675	23650
475	Deduct W/out AT		475	475	24250	Utility Limited TD (4WD) U43F		21825	27675
150	Deduct W/out Cruise		150	150	375	Add Rear Entertainment Sys		375	425
<b>2001 EXPLORER SPORT TRAC-V6 MC: II</b>					50	Add Theft Recovery System		50	75
13650	Utility 4D	U67	12300	16250	525	Deduct 5.4L V8 Eng (V10)		525	525
					450	Deduct W/out Leather		450	450
					200	Deduct W/out Pwr Seat		200	200

SEE TRUCK OPTION PAGE FOR ADDITIONAL OPTIONS  
MIDWEST EDITION - AUGUST 2004

04-03472-0

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

Case No. 04-34446

In Re:

Kathleen M Mulvihill  
and James M Mulvihill,  
Debtors,

Chapter 13 Case

VERIFICATION FOR MOTION FOR RELIEF FROM STAY

I, Carolyn Boynton, the Designated Agent for Ford Motor Credit Company, the Creditor herein, declare under penalty of perjury that the following is true and correct according to the best of my knowledge, information and belief, and based on the Creditor's business records:

1. I am legally competent to testify and am personally familiar with the debt owed by Debtor to the Creditor on account number(s) 30084654.
2. The Debtor owes the Creditor \$15,029.79, payoff amount as of July 30, 2004, plus accrued unpaid interest thereon since that date. The monthly loan payment is \$432.45. As of July 30, 2004, the loan payments are in arrears \$1,297.35 for payments owing since June 7, 2004. Jennifer R Preston is a cosigner on the loan documents and is jointly liable for the debt.
3. The debt owed to the Creditor is secured by a perfected lien on a 2001 Ford Explorer 2D Sport 4WD. The current NADA published retail value of the collateral is \$13,125.00.
4. The proposed plan states the collateral is to be surrendered; no surrender has been done yet.
5. True and correct copies of the title documents are attached to the Motion as Exhibit "A". True and correct copies of the loan documents are attached as Exhibit "B".
6. Loan documents require insurance be maintained to protect the Creditor's interest in the collateral. No evidence of insurance has been provided since filing.

Dated:

*August 23, 2004*

*Carolyn Boynton*

Carolyn Boynton  
Ford Motor Credit Company  
National Bankruptcy Svc Center  
P.O. Box 537901  
Tulsa MI 48153-7901

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:  
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**MEMORANDUM OF FACT AND LAW**

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Ford Motor Credit Company ("Movant") submits this Memorandum of Fact and Law in support of its motion for relief from the stay.

**FACTS**

Movant is the holder of a secured claim, and is thus a party in interest. Movant has a valid and perfected security interest in the collateral.

The total net balance due on the Contract is \$15,029.79 as of July 30, 2004. On information and belief, the collateral has an NADA retail value of \$13,125.00. NADA pages showing the collateral value are attached as Exhibit "C".

Debtors' Chapter 13 Plan has been filed with the Court. The terms of the Chapter 13 Plan provides for surrender of the collateral. The collateral has not been surrendered.

Movant's collateral is subject to depreciation in that the collateral is being used, subjecting the same to wear and tear, while Debtor is failing to make payments. There has been a further material default; Debtor has failed to provide Movant with evidence of collateral insurance.

The Contract is co-signed by Jennifer R Preston who is also a co-owner of the vehicle. The codebtor may be in possession of the vehicle.

**ARGUMENT**

Pursuant to 11 U.S.C. §362(d)(1), a creditor is entitled to relief from the automatic stay "for cause, including the lack of adequate protection of an interest in property of such creditor." In this case, there is a lack of adequate protection as follows:



- Failure to make the payments required by the Contract since June 7, 2004.
- Failure to make payments due post petition under the Contract.
- Failure to surrender collateral as stated in the Plan.
- Failure to maintain physical damage insurance on the collateral.

Movant has not been provided with adequate protection of Movant's interest in the collateral.

Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay.

See, United States Association of Texas v. Timbers of Inwood Association, Ltd. (In re Timbers of Inwood Association, Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed. 2d 740 (1988); In re Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306 (8th Cir. 1991). Pursuant to 11 U.S.C. §362(g), the burden is on the Debtor to prove adequate protection and/or absence of cause.

Pursuant to 11 U.S.C. §362(d)(2), relief from the automatic stay is also appropriate if the Debtor has no equity in the property and the property is not necessary to an effective reorganization. See, In re Gellert, 55 B.R. 970 (Bkrcty. D.N.H. 1983). In the present case, the balance due Movant on the Contract is \$15,029.79. It appears Debtor has no equity in the collateral. No evidentiary hearing is required on the issue of equity unless Debtors dispute it. Powers v. American Honda Finance Corp., 216 B.R. 95, 97 (N.D.N.Y. 1997). Movant believes that the collateral is not necessary to an effective reorganization. Pursuant to 11 U.S.C. §362(g), the burden is on the Debtor to establish that this collateral is necessary to an effective reorganization.

Pursuant to 11 U.S.C. §1301(c)(1), a creditor is entitled to relief from the codebtor stay "to the extent that ... such individual received the consideration for the claim held by such creditor". The codebtor received consideration for the claim upon becoming an owner of the vehicle.

Pursuant to 11 U.S.C. §1301(c)(2), a creditor is entitled to relief from the codebtor stay "to the extent that ... the plan filed by the debtor proposes not to pay such claim." Debtor's plan clearly proposes to not pay the claim but rather to surrender the collateral.

Bankruptcy Rule 4001(a)(3) imposes a stay of 10 days which the court may, in its discretion,

order is not applicable so that Movant may immediately enforce and implement the order granting relief.

Advisory Committee Notes to 1999 Amendments to Bankruptcy Rule 4001.

Dated: September 3, 2004

**STEWART, ZLIMEN & JUNGERS, LTD.**

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:  
Kathleen M Mulvihill and James M Mulvihill,  
Debtors,

Case No. 04-34446  
Chapter 13 Case

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**UNSWORN CERTIFICATE OF SERVICE**

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I, Linda Jeanne Jungers, declare under penalty of perjury that on September 3, 2004, I mailed copies of the attached Notice of Hearing and Motion for Relief from the Stay with Exhibits, Verification, Memorandum of Fact and Law, Certificate of Service, and proposed Order, by first class mail postage prepaid to each entity named below at the address stated below for each entity.

Kathleen M Mulvihill  
20529 - 485th Street  
Mc Gregor, MN 55760

James M Mulvihill  
921 South Elm Street  
Belle Plaine, MN 56011

Jennifer R Preston  
20529 - 485th Street  
Mc Gregor, MN 55760

Paul E Ross  
Ross & Norton  
287 Marschall Rd Suite 203-A  
Shakopee, MN 55379

Jasmine Z. Keller  
Chapter 13 Trustee  
12 S. 6th St #310  
Minneapolis, MN 55402

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th Street  
Minneapolis, MN 55415

Executed on: September 3, 2004

Signed: /e/Linda Jeanne Jungers  
Linda Jeanne Jungers  
STEWART, ZLIMEN & JUNGERS  
430 Oak Grove Street, #200  
Minneapolis, MN 55403

04-03472-0

UNITED STATES BANKRUPTCY COURT  
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**ORDER FOR RELIEF FROM THE STAY**

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Ford Motor Credit Company's Motion for an order granting relief from the stay came before the Court on September 20, 2004 at 10:30 AM o'clock.

Based on the arguments of counsel, all the files, records and proceedings herein, the court being advised in the premises, and the court's findings of fact and conclusions of law, if any, having been stated orally and read in open court following the close of evidence,

IT IS HEREBY ORDERED:

1. The automatic stay is modified to permit Ford Motor Credit Company to repossess and sell the  
2001 Ford Explorer 2D Sport 4WD, VIN 1FMYU70E01UC53241  
in accordance with applicable state law.
2. The codebtor stay is hereby modified to permit Movant to proceed with its state court remedies against Jennifer R Preston.
3. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States Bankruptcy Judge